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Attorneys for Plaintiff  
McKESSON CORPORATION

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

McKESSON CORPORATION, a Delaware  
corporation,

Plaintiff,

v.

FAMILYMEDS GROUP, INC.,  
f/k/a Drugmax, Inc., a Connecticut corporation,

Defendant.

FAMILYMEDS GROUP, INC.,  
f/k/a Drugmax, Inc., a Connecticut corporation,

Counterclaimant,

v.

McKESSON CORPORATION, a Delaware  
corporation,

Counterdefendant.

FAMILYMEDS, INC.,  
a Connecticut corporation,

Cross-Complainant,

v.

McKESSON CORPORATION, a Delaware  
corporation,

Cross-Defendant.

Case No.4:07-cv-05715 WDB

**DECLARATION OF MARIA K. PUM IN  
SUPPORT OF OPPOSITION OF  
McKESSON CORPORATION TO  
THE MOTION BY FAMILYMEDS,  
INC., FOR AN ORDER GRANTING  
LEAVE TO DISMISS CROSS-  
COMPLAINT WITHOUT  
PREJUDICE**

Complaint filed: November 9, 2007

Counterclaim & Cross-Complaint Filed:  
December 17, 2007

Date: August 20, 2008

Time: 1:30 p.m.

Place: Ctrm 4

1301 Clay St., 3d Floor  
Oakland, CA

1 I, MARIA K. PUM, declare that I have personal knowledge of the following facts and, if  
2 called upon to do so, I could and would testify competently thereto:

3 1. I am a partner at the law firm of Henderson & Caverly LLP, counsel for plaintiff  
4 McKESSON CORPORATION ("McKesson") in this action.

5 2. On June 4, 2008, McKesson filed its motion for summary judgment in this action  
6 (the "Motion for Summary Judgment") and electronically served it upon counsel for Familymeds  
7 Group, Inc. and Familymeds, Inc. (together, "Familymeds").

8 3. Among the pleadings and papers filed on behalf of McKesson in support of the  
9 Motion for Summary Judgment was a "Declaration of Kristen E. Caverly, Esq. in Support of  
10 Motion for Summary Judgment Or, in the Alternative, Summary Adjudication by McKesson  
11 Corporation" (the "Caverly Declaration"). A true and correct copy of the Caverly Declaration as it  
12 was filed (and served) on June 4, 2008 as Document no. 41 on the Docket is attached hereto as  
13 **Exhibit A.**

14 4. On June 6, 2008, FM Group and FM Inc. filed their complaint commencing Case  
15 No. 08-CV-2850 (the "New Lawsuit"). We as counsel for the defendants in the New Lawsuit  
16 agreed to accept service of the complaint commencing the New Lawsuit on June 20, 2008.

17 5. On July 14, 2008, Matthew Kenefick, one of the attorneys for Familymeds, left a  
18 voicemail message for me asking that McKesson stipulate to a dismissal of FM Inc. from the  
19 instant action without prejudice. This was not a an acceptable request in the face of McKesson's  
20 already-filed motion for summary judgment which, if granted, would dispose of all matters raised  
21 in the pending litigation, including the claims of FM Inc.

22 6. Familymeds filed its motion for leave to dismiss FM Inc. from this action without  
23 prejudice on July 16, 2008.

24 I declare under penalty of perjury under the laws of the United States of America that the  
25 foregoing is true and correct. Executed this 30<sup>th</sup> day of July, 2008.

26  
27   
28 MARIA K. PUM

**PROOF OF SERVICE**

I am employed in the County of San Diego, California. I am over the age of 18 years and not a party to the within action. My business address is Henderson & Caverly LLP, P.O. Box 9144, 16236 San Dieguito Road, Suite 4-13, Rancho Santa Fe, California 92067.

On July 30, 2008, I served the foregoing:

**DECLARATION OF MARIA K. PUM IN SUPPORT OF OPPOSITION OF  
McKESSON CORPORATION TO THE MOTION BY FAMILYMEDS, INC.,  
FOR AN ORDER GRANTING LEAVE TO DISMISS CROSS-COMPLAINT  
WITHOUT PREJUDICE**

on the following parties in this action in the manner set forth below:

Robert C. Gebhardt, Esq.  
Jeffer, Mangels, Butler & Marmaro LLP  
Two Embarcadero Center, Fifth Floor  
San Francisco, California 94111-3824

☐ (BY MAIL) I placed each such sealed envelope, with postage thereon fully prepaid for first-class mail, for collection and mailing at Henderson & Caverly LLP, Rancho Santa Fe, California, following ordinary business practices. I am familiar with the practice of Henderson & Caverly LLP for collection and processing of correspondence, said practice being that in the ordinary course of business, correspondence is deposited in the United States Postal service the same day as it is placed for collection.

☒ (BY EMAIL) I electronically filed such document using the ("CM/ECF") system which will send a Notice Of Electronic Filing to CM/ECF participants.

☐ (BY FACSIMILE) I transmitted the above-listed document to the party listed above via facsimile. The transmission was reported complete and without error. The telephone number of the facsimile machine I used was (858) 756-4732.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed at Rancho Santa Fe, California on July 30, 2008.

  
Quynh N. Nguyen

# **EXHIBIT A**

MARIA K. PUM (State Bar No. 120987)  
KRISTEN E. CAVERLY (State Bar No. 175070)  
HENDERSON & CAVERLY LLP  
P.O. Box 9144 (all U.S. Mail)  
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Attorneys for Plaintiff  
McKESSON CORPORATION

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

McKESSON CORPORATION, a Delaware  
corporation,

Plaintiff,

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FAMILYMEDS GROUP, INC.,  
f/k/a Drugmax, Inc., a Connecticut corporation,

Defendant.

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Counterclaimant,

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McKESSON CORPORATION, a Delaware  
corporation,

Counterdefendant.

FAMILYMEDS, INC.,  
a Connecticut corporation,

Cross-Complainant,

v.

McKESSON CORPORATION, a Delaware  
corporation,

Cross-Defendant.

Case No.4:07-cv-05715 WDB

**DECLARATION OF KRISTEN E.  
CAVERLY, ESQ. IN SUPPORT OF  
MOTION FOR SUMMARY JUDGMENT  
OR, IN THE ALTERNATIVE,  
SUMMARY ADJUDICATION BY  
McKESSON CORPORATION**

Complaint Filed: November 9, 2007  
Cross-Complaint Filed: December 17, 2007

Motion Date: August 6, 2008  
Time: 1:30 p.m.  
Place: Ctrm 4  
1301 Clay St., 3d Floor  
Oakland, CA

1 I, KRISTEN E. CAVERLY, declare that I have personal knowledge of the following facts  
2 or know of such facts based on my review of the files and records maintained by my office in the  
3 normal course of business, and, if called upon to do so, I could testify competently thereto:

4 1. I am a partner at the law firm of Henderson & Caverly LLP, counsel of record for  
5 McKESSON CORPORATION ("McKesson") in this action.

6 **Authentication of Documents**

7 2. I have in my custody and control various pleadings that were filed in this case by  
8 McKesson and by each of FAMILYMEDS GROUP, INC., f/k/a Drugmax, Inc., a Connecticut  
9 corporation ("FM Group") and FAMILYMEDS, INC., a Connecticut corporation ("FM, Inc." and  
10 together with FM Group called "Familymeds"). Based on my review of such pleadings and papers  
11 that have been filed in this case, I know of my own personal knowledge that attached to the  
12 "Compendium of Exhibits" (the "Exhibit Compendium") as Exhibits G through L as listed below,  
13 are true and correct copies of the documents described in the second column below:

14	15	16
	Exhibit Reference	Document
17	G	McKesson Corporation's "Complaint for Breach of Contract" filed on November 9, 2007 (Court's Docket No. 1.)
18	H	Familymeds Group, Inc.'s "Answer to Complaint for Breach of Contract" 19 filed on December 17, 2007 (Court's Docket No. 6.)
20	I	"Counterclaim for Specific Performance of Contract and Accounting; 21 Cross-Complaint for Accounting" filed by Familymeds Group, Inc. and Familymeds, Inc. on December 17, 2007 (Court's Docket No. 6.)
22	J	"Amended Notice of Motion, Motion, Memorandum of Points and 23 Authorities of McKesson Corporation Seeking to Dismiss: (1) Counterclaim for Specific Performance of Contract; and (2) Cross-Complaint for 24 Accounting" filed by Corporation on January 14, 2008 (Court's Docket No. 14.)
25	K	"Order Re May 5, 2008, Case Management Conference" dated May 5, 2008 26 (Court's Docket No. 36.)

1 L "Answer of McKesson Corporation To: Counterclaim for Specific  
2 Performance of Contract and Accounting; and (2) Cross Complaint for  
3 Accounting" filed by McKesson Corporation on May 19, 2008 (Court's  
4 Docket No. 37.)

5 **Efforts to Obtain Joint Statement of Undisputed Facts**

6 3. In compliance with Judge Brazil's Standing Order requiring the parties to meet and  
7 confer regarding a Joint Statement of Undisputed Facts on McKesson's summary judgment  
8 motion, on Wednesday May 28, 2008 at 11:47 a.m., I sent an email to Messrs. Robert C. Gebhardt  
9 and Matthew S. Kenefick, counsel for Familymeds with a proposed joint statement.

10 4. In that email, I informed Messrs. Gebhardt and Kenefick of the Court's requirement  
11 that the parties attempt to agree on a joint statement, and that McKesson's motion for summary  
12 judgment would be filed on June 4, 2008 and is set for hearing on August 6, 2008 at 1:30 p.m.

13 5. I requested that Messrs. Gebhardt and Kenefick reply no later than Monday, June 2,  
14 if there are facts on the proposed joint statement to which Familymeds would not stipulate or if  
15 Familymeds would want to suggest reworking of a particular fact to allow for stipulation. I also  
16 stated that the facts to which the parties could not jointly agree would be moved to Section II of the  
17 proposed joint statement.

18 6. On June 2, 2008, I spoke to Mr. Kenefick by phone. At that time, he and Mr.  
19 Gebhardt had not reached an agreement as to any of the proposed joint facts.

20 7. On June 3, 2008, Mr. Keneflick and I exchanged at least three phone messages. Mr.  
21 Keneflick did not indicate in his messages whether or not there were certain of the proposed facts  
22 to which Familymeds would stipulate.

23 8. On June 4, 2008 at approximately 10:15 a.m., I again left a message for Mr.  
24 Keneflick with no response. Later that day, I sent a revised Statement of Facts to Mr. Keneflick  
25 and Mr. Gebhardt as McKesson's intended filing given the lack of stipulation or communication

26 ///

27 ///

28 ///

1 from Familymeds. I indicated that McKesson would continue to be available to discuss stipulated  
2 facts prior to Familymeds' opposition.

3 I declare under penalty of perjury under the laws of the United States of America and the  
4 State of California that the foregoing is true and correct. Executed June 4, 2008 in Rancho Santa  
5 Fe, California.

6  
7   
8 KRISTEN E. CAVERLY